The Real Face of the International Criminal Court

Understanding the underlying reasons behind the actions of the ICC and exposing what is happening is an essential step in our critical resistance to this real threat to our human rights for the foreseeable future.

By Alexander Mezyaev

The International Criminal Court: The Dream and the Reality

The idea of a just world has a long history. It appeared in the theoretical works of philosophers and lawyers from early ages. Ancient Romans used to say that law is the 'art of good and justice'. But it was only after the Nuremberg and Tokyo international military tribunals in the middle of the twentieth century that the idea of justice for war crimes and crimes against humanity started to sharpen. Nevertheless it took more than 50 years to create new international criminal tribunals (for Yugoslavia and Rwanda) and they still were of an ad hoc nature. The negotiations for the creation of a permanent international criminal court were ongoing for almost 50 years and were finalised with the signing of the Rome Statute of the International Criminal Court (ICC) in 1998, which entered into force in 2002 and started to operate in 2003.

But after the ICC started to operate, the dreams and realities started to clash. Analysing the activity of the ICC we always face 'strange' facts. These facts are really disturbing and because of this some commentators prefer to not mention them. Nevertheless without understanding the logic of these disturbing facts it is impossible to understand the reality of the ICC as an institution. Here are some examples:

1. The very first witness at the very first trial at the ICC (Lubanga trial, DRC situation) confessed right in the courtroom that he gave false evidence and was coached to do so by the prosecution. The court did not take action on this matter.
2. In the trial of Germain Katanga (DRC situation) the prosecution did not prove any of the charges it brought against the accused. But

instead of acquitting the accused, the court changed the charges and found Katanga guilty in relation to the new charges it had imposed.

3. During the announcement of the judgment in the case of Ngudjolo Chui (DRC situation) the presiding judge said the following: 'Mr. Chui, the fact that we are acquitting you does not mean that you are innocent'. This is a total and demonstrative violation of the presumption of innocence.
4. The President of Cote-d'Ivoire, Laurent Gbagbo, was imprisoned by the ICC for four years without trial. He spent almost two and a half years in prison even without confirmation of charges. In any local legal system no person could be detained without confirmed charges. The first hearings for confirmation of charges ended with an agreement by the judges that there was no case. Instead of dismissing the case, the majority (two judges against one) decided to give the prosecution 'more time to collect more evidence'. After a second attempt the ICC Pre-Trial Chamber finally confirmed the charges. The decision was adopted by the majority (two to one). The dissenting judge claimed that there was still no case. The defence tried to appeal this decision to the Appeals Chamber, but the Pre-Trial Chamber refused permission to appeal.
5. In the case against Uhuru Kenyatta and others (Kenya situation) the prosecution withdrew the case against Kenyatta and his co-accused *after the charges were confirmed by the court*. The trouble with this situation is that prosecution said, at this stage, that there was no evidence. But, if that were the case, how was the court able to confirm the charges without seeing supporting evidence for the charges?
6. In the case against Muammar Gaddafi after the assassination of the accused the court simply 'terminated the proceedings'. We have seen a lot of so-called contempt cases when certain individuals were put on trial because of the interruption of the integrity of the proceedings, for example, cases of bribing witnesses, or refusal to give evidence. But what could be more damaging to the integrity of the proceedings than the assassination of the accused? However, notwithstanding the fact that the killing was filmed and the criminals could easily be identified, the whole issue was not discussed or considered by the court.
7. During the trial in the case of former Vice-President of DRC Jean-Pierre Bemba all his defence team (with the exception of one non-African member) were violently arrested.

In relation to the disturbing facts listed above, we face the question of whether to ignore the facts or to interrogate the concept of the ICC. Because these facts cannot be explained by mistakes and negligence. They also cannot be explained if we consider the ICC as an international institution of the highest degree of legal standards and integrity. This means that these facts cannot be explained within the established concept of the ICC as an international court, as a guardian of law and justice. And thus we have to revisit this official concept.

The official aim of the International Criminal Court is enshrined in article 1 of the Rome Statute. It says that the ICC is established 'to exercise jurisdiction over persons for the most serious crimes of international concern'. Thus the prosecution of the most serious international crimes is proclaimed as its main aim. But the practice of the ICC shows that its activities are not in line with this declared aim.

The situation in Cote-d'Ivoire was brought to the attention of the ICC in 2003, but until 2011 the Court did nothing. Even eight years later the ICC acted not in the context of the case that was brought to it in 2003, but in the context of the new situation of the forcible removal of President Gbagbo. And in this context the ICC acted really quickly, issuing an order for the arrest of Laurent Gbagbo after a few weeks.

The situation in Libya was brought to the ICC's attention by the UN Security Council when NATO forces were preparing to invade the country. At that time Libyan citizens had the highest social guarantees. Now Libya is totally destroyed, its statehood is under serious doubt and, more than 4 years after the coup, thousands of refugees are still leaving the country. The ICC issued no indictments for those who ruined the state. Instead it issued indictments against those who built that state.

The situation in the Central African Republic (CAR) was brought to the attention of the ICC in 2005, but the only action taken during these ten years is a case against former Vice-President of the Democratic Republic of the Congo Jean-Pierre Bemba. Why was Bemba indicted by the ICC? Because he sent his troops to the legitimate CAR President Patasse, responding to his official request to help him to suppress an armed rebellion. Now the legitimate CAR President has been overthrown, the country is in ruins and ICC has produced no indictments against those responsible for the destruction.

When complaints about the situation in Uganda were lodged the ICC did nothing except publish vague orders for the arrest of three people, which were never followed through. Investigations by the ICC in Mali and Nigeria did not stop people from suffering as a result of al-Qaeda and Boko Haram's terrorist actions. But the ICC openly sided itself with these organisations, warning Malian and Nigerian leaders that they might be called to The Hague if they did not defend the human rights of these terrorists.

So where has the ICC brought peace? Where has it brought justice? It appears to have very little or no interest in most of the international human rights crimes which are happening all over the world. At the same time the ICC becomes actively involved in certain conflicts and it would be difficult not to notice that its activity in many cases is highly biased towards one side of the conflict.

Another important fact should be highlighted. When taking its decisions, the International Criminal Court seems to be a law unto itself. In this respect, it:

- gravely violates the existing rules of international law;
- derogates the existing standards of law and jurisprudence; and

- creates new rules, i.e. its own law.

The violation of existing rules of international law

The practice of ICC shows that some of its cases are based on the grave violation of fundamental principles of modern international law, namely the principle of equality of states, the principle of consent of states and the voluntary nature of international law. In this respect special attention should be paid to the situations in Libya and Sudan (and subsequently to all Sudanese and Libyan cases). Analysis shows that these situations were 'referred' to the ICC in violation of international law. The glaring nature and the graveness of these violations force us to conclude that they cannot have been made through ignorance or negligence, but must have been made consciously to destroy or challenge the very basis of modern international law.

The situation in Sudan was referred by the UN Security Council to the ICC in March 2005 and the situation in Libya in February 2011. The problem of these referrals is that they were not taken in accordance with international law. The main question that arises in this regard is: on what legal basis has the Security Council acted?

In its Resolution 1593 (2005) the Security Council (UNSC) failed to name any exact article of any exact legal document in support of its decision. It only said that it was 'acting under Chapter VII of the UN Charter'. Reference to a 'chapter' is quite disturbing from the legal point of view, because it shows that the Security Council indeed could not name any exact article or clause to justify its decision. Legal decisions must be based on specific articles and even clauses of articles of a treaty, not on whole chapters. The vague reference to the chapter as a whole is itself clear proof of the absence of any legal basis for this decision.

It is interesting to note that the ICC Pre-Trial Chamber attempted to atone for this legal impotence by the Security Council. It claimed that the Security Council acted pursuant to Article 13b of the Rome Statute. This attempt to justify the referral was even more legally inept than the UNSC's failure to give any explanation, because the powers of the Security Council are regulated by the United Nations Charter, not by any other treaty. The UNSC simply could not act on the basis of the ICC Statute. The attempt to claim that UNSC based its powers on another treaty and not the UN Charter is scandalous and illegal. The Security Council does not have the right to use powers which it does not enjoy according to the UN Charter, and, moreover, in this case applying it to a State which is not a party to the Rome Statute!

The UN Charter does not give the Security Council the right to refer situations to the ICC. This is the only possible conclusion if we take into consideration the principles of international law. Such a power is too serious to be considered as 'implied' and not to be included in the Charter as the legal basis for the Security Council's actions. Thus, in the absence of any amendments to the UN Charter itself, the Security Council does not have the right to refer situations to the ICC. This is especially so in relation to the States which are not parties to the Rome Statute. Members of the United Nations have given their consent only to those powers of the UN Security Council which are enunciated in the UN Charter, not to powers expressed in other treaties.

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There are many other legal defects in these 'referral' cases. For example, paragraph 1 of UNSC Resolution 1593 (2005) says that it is referring the situation in Darfur "since 1 July 2002" to the ICC Prosecutor. But the very resolution was adopted on 31 March 2005! On what legal basis does the Security Council claim the right to apply criminal law with retroactive effect? Where is it stated that the Security Council has such a power? It is totally contrary to common principles of law! Let us imagine that after the UNSC referral Sudan would sign and ratify the ICC Statute. What would be the legal effect of article 11 of the ICC Statute which regulates the temporal jurisdiction of ICC? Paragraph 1 of this article states that "The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute." Paragraph 2 of the same article says, "If a State becomes a party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under article 12, paragraph 3." And what about Article 24 which specifies that "no person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute"?

Obviously the decision of the UN Security Council is discriminatory against Sudanese citizens indicted by the ICC because different rules apply to them as opposed to citizens of states which have signed the ICC statute.

Many international human rights treaties specifically prohibit discrimination in criminal proceedings: if we accept that it is possible to initiate proceedings against a State which is not a party to the ICC (whether through the UN Security Council or by any other means) then we must accept the legality of discrimination. But it is absurd to say that an international treaty may legalise such discrimination. It is difficult to believe that states decided to discriminate between accused persons from a state party and accused persons from a non-state party, for such discrimination would be contrary to the most basic human rights. If a thesis leads to an absurd conclusion, then the thesis should be abandoned. Thus it must be concluded that without the amendment of the

UN Charter, any referral to the ICC of a situation in a non-signatory state is not possible.

There are many other legal problems with these 'referral' UNSC resolutions. For example, what is the legal value of a decision forcing a state to be obliged by a treaty to which some Security Council members themselves are not even signatories? In March 2005, only 9 of the 15 member states of the Security Council (and 3 of the 5 permanent members) were state-parties to the ICC Statute. What is the legality of a decision taken by states which are not parties to a treaty to force another state to be a party to it, or to be bound by obligations under it? In fact, even if all the members of the Security Council had been state parties to the Rome Statute then this would not have changed the illegality of their decision. This is absolutely illegal, because it violates the very foundations of the international legal order.

International courts used as a tool for crimes committed by the West

Several international criminal tribunals, including the ICC and ICTY (International Criminal Tribunal for the former Yugoslavia) have been used by the West to further their aims in support of their international aggression. The three examples of Libya, Ukraine and Yugoslavia illustrate this tendency.

The situation in Libya was brought to the ICC by the UNSC in February 2011, and decisions were made too fast for any meaningful investigation to have been completed. The ICC prosecutor prepared an order of arrest against the Libyan head of state Muammar Gaddafi. This order of arrest was issued when NATO was already involved in aggression against Libya. Thus the ICC acted as a 'legal' instrument of war. (It is noteworthy to mention that one of the judges in the case against Gaddafi was an Italian citizen and Italy was one of the states taking part in NATO aggression against Libya. Thus the ICC was violating the elementary principles of independence of the judiciary).

In April 2014 the International Criminal Court received the acceptance of its jurisdiction of the ICC from the Ukraine. The defect of this decision is that the request was sent by an improper subject. People who claimed to be "the government of Ukraine" had no legal justification for that claim. Notwithstanding that, the ICC agreed with that acceptance. It is difficult to understand how an international court may work with a government that took a power illegally through a bloody coup. The first task of the ICC is to check the legality of the subject appearing before it.

To understand why this agreement constitutes taking part in a crime we have to look at the details of the acceptance of jurisdiction. The illegal government of Ukraine accepted the jurisdiction only for the purpose of prosecuting members of the overthrown government! By accepting jurisdiction from an illegal junta the ICC appears as a weapon of the *coup d'etat* committed in Ukraine.

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In 1999, during the aggression by NATO states against Yugoslavia, the International Criminal Tribunal for the former Yugoslavia (ICTY) issued an order for the arrest of the President. Notwithstanding the fact that there was no investigation, the ICTY prosecutor issued an indictment against Slobodan Milošević, who died of a heart attack whilst in jail during the trial. In this way the ICTY was not impartial but became a tool of NATO in the war.

International courts as a tool of a radical change of international law.

The best scientific approach for understanding any subject demands the use of several different approaches. One of the obstacles to understanding the reality of the ICC is the exclusive use of the method of analysis. But it is important to also use the method of synthesis. This means that we have to look at ICC activities in the context of the activities of the whole system of international criminal justice. Use of synthesis will show us that 'strange' facts are not only the products of the ICC. These facts are reflected throughout all the international tribunals. It means that we are experiencing the creation of a whole system with specific aims and we have to detect these aims and understand them.

The first international criminal tribunal after the Nuremberg and Tokyo military international tribunals was the ICTY. The activity of the ICTY clearly shows that when it wished to convict a person for political reasons it deviated from existing international law and created its own law. In order to convict President Slobodan Milošević the ICTY inserted and used the concept of the so-called 'joint criminal enterprise' (JCE). The third category of this JCE allows the court to convict anybody, including persons who not only have not taken part in the said crimes, but were not even aware that these crimes were being committed!

The International Criminal Tribunal for Rwanda violated the Convention on the prevention and punishment of the crime of genocide that prescribed the necessity to establish the specific intent. It decided that there was no need to establish the specific intent and that it was possible to convict a person for genocide even if intent was not established. This tribunal also 'corrected' the genocide Convention, added to it some new features with the sole purpose of convicting the accused of this tribunal. The same 'correction' of existing international law was made by other international tribunals, like the Special Tribunal for Lebanon and the Special Court for Sierra Leone. Thus we a can detect another common feature of the international tribunals – the destruction of the already existing international law on one side and the creation of new international law on another side. Needless to stress that international courts do not have the power to either destroy existing law, or

to create new law. However, the ICC and other international courts do not appear to accept existing international law as their framework.

Another example – the practice of 'proving' cases with the use of plea bargaining. Officially it looks as if the accused pled guilty and gave testimony about his crimes. The reality of these guilty pleadings is very different. First of all the accused is not giving his own testimony but obliged to sign a text of 'facts' prepared by the prosecution. The accused receives assurances that he will not receive a harsh sentence. The accused is obliged to give testimony against his co-accused. Thus the plea bargaining procedure is not aimed at establishing the truth, but at the conviction of certain accused parties with the use of the testimony of other accused parties that were forced to plead guilty. The practice of several international criminal tribunals (especially the ICTY and the ICTR) shows that plea bargaining is used with pressure.

The whole practice of the ICTR was based on a false plea bargaining with the Rwanda Prime Minister Jean Kambanda. The whole Srebrenica case in the ICTY was based on plea bargaining with Dražen Erdemović and M Nikolić. In this context the ICC's indictment against Simone Gbagbo (wife of President Laurent Gbagbo) was a clear attempt to resolve the case of President Gbagbo without trial.

Another serious derogation of international law is a derogation of human rights law by the international tribunals. For example those accused in international criminal tribunals are denied the right to choose the counsel of their own choice. This denial has a very 'good' explanation. Only counsels approved by the ICC and other courts may defend these accused. In reality, this seeks to guarantee that the counsel will not go too far in establishing the truth.

The only case when an ICC accused was able to get the defence counsel of his own choice was Jean-Pierre Bemba (Central African situation). That was secured by the ability of Bemba to finance his counsel himself (which is a unique case in the whole history of the international criminal justice). But in November 2013 the whole defence team of Bemba was arrested and put on trial. Officially the reason for this arrest was the attempt by the defence to prepare a false witness. It is of critical interest to note that the sudden arrest of Bemba's defence counsels was conducted just some hours before the defence was about to present evidence about how the ICC prosecution was bribing witnesses.

Bribing witnesses and presenting false witnesses is not an extraordinary event in the international criminal justice sytem. It is the rule rather than the exception. To give two examples, in the Vojislav Šešelj trial at the ICTY more than 20 witnesses gave sworn testimony that they were threatened by the prosecution and pressurised to give false evidence against the accused. The Court took no action against the prosecution! Moreover the accused was prevented from presenting his Defence Case. This is an unique case in the whole history of international criminal justice. In the Milošević trial one prosecution witness confessed that he was pressurised (and even tortured) to give a false testimony against President Milošević. The court took no action and did not investigate the claim.

When examining the ICC's activities in the context of activities of other bodies in the international criminal justice system a number of other important facts emerge: the same staff are working in these institutions (running from one court to another, and sometimes even working in different courts at the same time!); the same judges work in these courts (running from one court to another and sometimes working in different courts at the same time!); and the courts use each other's practice to set a legal precedent; thus, for example, the ICC is citing the decision of the ICTY as proof of its own legality.

Progressive international law versus regressive international law

The synthesis of the activity of the modern system of international justice allows us to detect new phenomena. But before we make a formulation about what this phenomenon *is*, it is important to stress, what it is *not*. The analysed phenomenon is *not* just the use of double standards. The analysed phenomenon is *not* just a violation of international law. The analysed phenomenon is *not* just the destruction of international law. All these enumerated phenomena are not new. What is really new is the *creation of new international law*. All the above mentioned problems of course exist – double standards, violation, destruction. But the important new feature is the *creation of parallel international law*.

Thus we have to conclude that the activity of the ICC is no way different from the activity of other organs of international criminal justice. The facts show that the main tasks of the international criminal justice system are the following:

- to act as a 'legal' tool for regime change, giving legitimacy to the removal of disobedient heads of states (situational aim); and
- to create a new body of international law which will reflect only the interests of the western powers (conceptual aim).

The phenomenon of the creation of new international law urges us to respond. Such response must be given in theoretical and practical ways.

From the theoretical point of view, we need to explain the objective reasons for this drastic change of international law as a social value. International law at every historical period reflects the exact level of international relations and the distribution of power between main (and other) participants of international relations. That is why international law in the 18th Century accepted war as a legal instrument in international relations and slavery as a perfectly legal practice. That is why international law in the 19th Century considered colonialism as a legal base for the division of states and peoples and a justification for the robbery of natural resources from the colonised countries. That law reflected the exact historical situation, when on the international scene there was no state or group of states able to present an alternative development for the whole world. This changed only after such a state (the Soviet Union) came into being and

later the formulation of a world socialist system. The first decree of the soviet government was the Decree on Peace. The modern principles of international law (like sovereign equality of states, non-interference in domestic affairs) seem to be obvious, but they came into existence exclusively because of the appearance of an alternative – and let us stress this specially – military and economically strong enough to defend this alternative world system.

The appearance and strengthening of the alternative world system allowed for the creation of new international law. This law was created by all members of the international community and in the interest of all (at least this was its stated aim). This international law became known as 'Progressive international law'. This name reflected the essence of this law – it reflected progress in international relations.

The destruction of the Soviet Union in December 1991 marked the beginning of the end of the system based on progressive international law. On May 1993 the first institution of the new system was established – the so-called International Criminal Tribunal for the Former Yugoslavia, followed by a series of similar tribunals, for Rwanda, for Sierra Leone, for Cambodia, for Lebanon….

All these new courts and tribunals were directed to one operative aim – the indictment and removal of targeted heads of states. The ICTY removed and indicted president of Yugoslavia Slobodan Milošević and former president Milan Milutinović. It also indicted four more heads of states (though unrecognised) – Radovan Karadžić and Biljana Plavšić (presidents of Republic Srpska), Milan Martićc and Milan Babić (presidents of the Republic of Serbian Kraina). In addition to that all political and military leaders and administrators were indicted and removed in Yugoslavia and then Serbia. The Special Court for Sierra Leone removed the President of Liberia, Charles Taylor. The Tribunal for Rwanda indicted former Prime Minister of Rwanda Jean Kambanda. Finally the ICC indicted the President of Cote-d'Ivoire, Libyan leader Muammar Gaddafi, Kenyan president Uhuru Kenyatta and President of Sudan Omar al-Bashir…

The Al-Bashir case and South Africa

In June 2015 the ICC tried to force the South African government to arrest Sudanese President Omar al-Bashir who attended an AU meeting in Johannesburg. The North Gauteng High Court issued a decision obliging the SA government to arrest al-Bashir, and this decision was not implemented. Unfortunately the discussion on this matter was limited by the very narrow approach that was taken by the SA court, which was to some extent the result of very poor arguments presented by the state lawyers. But only to some extent, because nothing prevented the court from considering certain issues that courts are obliged to consider.

First of all is the matter of jurisdiction.

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Even in the case when state lawyers did not raise any objection relating to jurisdiction, it was still the court's obligation to decide this issue for itself. It did not do so. Another mystery is why the court took the position that the obligation to cooperate necessarily meant the obligation to arrest, moreover to do this automatically. We are not going to analyse the arguments in the SA court decision in detail. What we would like to highlight nevertheless are those circumstances that somehow escaped the attention of the mass media and even judicial institutions.

First of all, there was the artificial exclusion of the majority of judges from the adoption of the decision to force South Africa to arrest President al-Bashir. The decision [that is called the 'ICC decision'] was adopted by a single judge. But the al-Bashir case is assigned not to a single judge but to a full Chamber constituted of three judges. Why were the other two judges not consulted? The formal answer to that question is that the decision was taken urgently. But this answer does not hold water, because the urgency of the decision was clearly the result of the intentionally late application by the prosecution. Information about al-Bashir's visit to South Africa was available to the ICC months in advance but the prosecution decided to apply for request to arrest just some hours before this visit. The reason is obvious – to create the urgency and thus exclude two judges (i.e. the majority!) from the decision-making process.

The other question arises with the attempt of the ICC (in reality – of one judge from the ICC) to force South Africa to arrest a sitting head of state, who, as such, enjoys immunity according to international law. Such an attempt was not legally supported. Any reference to article 27 of the ICC Statute is not convincing. This article says that 'immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person'. This article gave some commentators the wrong impression, leading to claims that nowadays heads of state no longer have immunity. In fact a more careful reading of this article shows that it is directed only to the ICC Prosecutor and other ICC officials, but not to states. This article relates only to the relations between accused and the Court. As concerns states, the immunities of heads of states and governments are regulated by norms of customary international law and treaties. These treaties clearly obliged the states to assure the immunity of the highest state officials.

Moreover, the so-called al-Bashir case is not about Omar al-Bashir in his personal capacity. It is about the President of Sudan, i.e. about state sovereignty. Because of that the attempt of the ICC to force South Africa to arrest al-Bashir was an action against South Africa, bringing the state to a position when it is asked to destroy the very base of current international law – state sovereignty and equality.

The crystal clear nature of this situation raises the legitimate question as to why the ICC engaged in that provocation against South Africa. In retrospect, knowing the consequences (the SA court decision, its supposed non-respect by the SA government, the impeachment move against the SA President etc.) we may suggest that this move was made with the intention of embarrassing the government of South Africa if not to destabilise the country.

Conclusions

To conclude, we have to see that for the moment there are two separate systems of international law. The first one is the current international law, often referred to as progressive international law. It is the result of the developments of the international system from 1945. The regime of this law is characterised by the aim (common interest for all members of the international community) and way of creation (made by all equal members of international community). The other system that is being created mainly through international courts and tribunals, is regressive international law. The regime of this law can be characterised using the same features but in negative terms: it is created by only certain 'chosen states' and operates only in their interest. Step by step this second system of regressive international law is becoming bigger and stronger.

The modern world is more complex than it was in 1945. To understand the modern world we need at least proper definitions that correctly reflect the essence of objects and phenomena. It is interesting to note that the very lack of definitions sometimes acts as a base for non-existence of certain subjects or phenomena in our minds. One of the sharpest examples in this regard is the word 'international'. We speak of international treaties, organisations, operations, politics… . Sometimes the use of this word is an obvious abuse, like in an expression 'international judge'. The idea of a judge acting as a representative of the international community is clear, but does it have anything to do with reality? The judges are elected by other states but nominated by the state of their citizenship. In some cases the election process is a pure hypocrisy – when there is no competition between candidates and their number is the same (or nearly the same) as the number of places. In this situation we are facing not 'international' institutions, but rather a group of foreign representatives.

While we have some treaties and organisations (like the United Nations) that could be more or less truly called international, we still have institutions that clearly may not be defined as such. These institutions include the International Monetary Fund, the World Bank, NATO, the European Union and the International Criminal Court. We have to notice the attempt made by some researchers to correct the situation and to introduce the new definition that better reflect the situation, namely introduction of the word 'supranational'. This attempt is indeed very useful in defining the true nature of subjects like European Union institutions, but it is still not enough. International institutions were created for representation of the interest of the community of all states and for achieving common values and goals. Supranational institutions constitute a new phenomenon where the interest of such institutions may not necessarily coincide with the interests of member states. In such institutions the states sometimes are not the decision-makers.

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Nowadays the dichotomy national/international does not properly reflect the real situation. Even the introduction of the supranational or even transnational levels does not change things. National, supranational and international are all nation-centric phenomena. But institutions like the ICC are contra-national phenomena. This level of politics reflects interest of a subject not connected with any state or group of states, though based in certain states. The interests of these subjects do not coincide with the interest of states or the international community as a whole. Moreover, sometimes the interests may be even contradictory. The strength of this subject is several times bigger than the power of most of the states. And as a *de facto* matter we witness the existence of certain institutions that assure a new level in politics. We suggest that this level may be called 'contra-national', stressing its centrifugal character, where the centre is a nation.

Thus, we argue that the International Criminal Court is an institution of the contra-national level of politics. And its real aims and policy may be understood only in this context. The ICC was established with two main purposes: to create a universal judicial institution for controlling the highest level of national and international politics. The main ways to achieve this control are through creating the power to remove 'disobedient' heads of state and destroying the protection provided by existing national and international law through creating new [regressive/repressive] international law. To be more correct – contra-national law.

To stop this process of the destruction of our international system and the seizing of power by contra-national subjects, first of all we have to detect it, to realise that this is indeed happening, and to make others aware of it. And second we have to protest the process and make it clear that we reject it and all the results of its work. If the international community does not do that, one day we will wake up and discover that no signs of progressive international law exist anymore. The repressive contra-national law that the 'chosen forces' are making for us now will become the only law available. In this context, understanding the underlying reasons behind the actions of the ICC and exposing what is happening is an essential step in our critical resistance to this real threat to our human rights for the foreseeable future. ■